IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.561 OF 2004

Suresh Vishnu Shewale. .. .. Petitioner
V/s.
The State of Maharashtra
& ors. .. .. .. Respondents

Mr.M.L. Patil for Petitioner.

Mr.A.P. Vanarse, AGP for Res.Nos.1 to 4.

Mr.R.V. More for Res.No.5.

Mr.Rahul Thakur, Advocate for Respondent No.6 is absent.

Mr.R.G. Ketkar for Res.No.7.

CORAM : H.L. GOKHALE &
SMT.NISHITA MHATRE, JJ.
DATED : 13th September 2004

ORAL ORAL : (Per H.L. Gokhale, J.)

1. Heard Mr.Patil for the Petitioner. Mr.Vanarse, Assistant Government Pleader, appears for Respondent Nos.1 to 4 and Mr.More for Respondent No.5. Advocate for Respondent No.6 is not present. Mr.Ketkar appears for the newly added Respondent No.7 in view of the order passed on Civil Application No.2229 of 2004 today.

2. Rule. The Petition is heard forthwith. The Petitioner was working as a Supervisor under

Respondent No.5-Agricultural Produce Market Committee when he came to be promoted as an Assistant Secretary on 26th April 2000. Respondent No.6 also came to be promoted to the post of Assistant Secretary after about two months i.e. on 26th June 2000. The Petitioner was thereafter promoted to the post of Deputy Secretary on 27th June 2002 and accordingly, a proposal of his promotion and appointment was sent for the approval of Respondent No.3-Director of Marketing.

3. During the pendency of decision on this proposal, Respondent No.6 challenged the promotion of the Petitioner to the post of Deputy Secretary by filing an Appeal under Section 52B of the Maharashtra Agricultural Produce Marketing (Regulation) Act, 1963 (for short, "the said Act"). There was some delay in filing that Appeal and hence, an Application was made for condonation of delay. However, Respondent No.3 rejected that Application by holding that he had no power to condone the delay. That order was passed on 4th March 2003.

4. Although this Appeal filed by Respondent No.6 is rejected in this fashion, the proposal sent by Respondent No.5 seeking approval to the

Petitioner's promotion was also pending before Respondent No.3. As far as that proposal was concerned, however, Respondent No.3-Director of Marketing declined to approve it.

5. The Petitioner felt aggrieved by that decision and filed an Appeal to the Minister by invoking the Minister's powers under Section 52(B) (1) (b) of the said Act. The Minister, however, took the view that he did not have the power and, therefore, dismissed it on 1st July 2003. It is being aggrieved by this decision that the present Petition has been filed.

6. Mr.Patil, learned Counsel appearing for the Petitioner, submitted that the Hon'ble Minister has clearly erred in his decision by holding that he did not have the power. The Minister seems to be impressed by the fact that the Director of Marketing has already arrived at one decision in the Appeal. However, what is to be noted is that the Appeal was filed by Respondent No.6, whereas the decision, which was challenged by the Petitioner before the Minister, was against not granting approval to the proposal forwarded by Respondent No.5 for the promotion of the Petitioner to the post of Deputy Secretary. As far as that decision of Respondent No.3 on the

approval of the proposal of the Petitioner's promotion and appointment to the post of Deputy Secretary is concerned, it could not be said that the Minister would be exercising the power against an appellate order. The jurisdiction of the Minister was invoked under Section 52B (1)(b) of the said Act, which was an independent Appeal and, therefore, the Minister was obviously in error in declining to accept his jurisdiction.

7. Mr.Patil appearing for the Petitioner so also Mr.Ketkar appearing for the newly added Respondent No.7, have certain submissions with respect to the rival claims on merits. We, however, do not intend to go into the merits of the matter. This is particularly since Mr.Patil has made a statement that Respondent No.7 will be joined in the Appeal which was filed before the Minister.

8. In our view, therefore, the ends of justice will meet, if the order passed by the Minister is set aside and the Appeal filed by the Petitioner under Section 52B (1) (b) of the said Act is restored to the file of the Minister wherein Respondent No.7 will join as an additional party Respondent, which we hereby direct.

9. Mr.More appearing for Respondent No.5-Agricultural Produce Market Committee makes a request that this Appeal may be decided at the earliest, failing which the Marketing Committee may be permitted to appoint a Deputy Secretary. In our view, the Authority concerned should decide the Appeal within two months on an outer side. This is because the only rival claims of the persons concerned are to be considered which should, in any case, be possible within two months. We accordingly direct the concerned Authority to decide the revived Appeal by end of November 2004. We clarify that in the event the Appeal is not so decided by end of November 2004, Respondent No.5-Agriculcural Produce Market Committee will be at liberty to appoint an appropriate officer as the Deputy Secretary, which decision will be taken on merits and in accordance with law. That decision, however, will be subject to the decision to be arrived at by an Authority under Section 52B ((1)(b) of the said Act on the Appeal filed by the Petitioner herein.

10. Rule is made absolute as above. No order as to costs.

11. Authenticated copy of this order be furnished to all the parties. The learned AGP

will see to it that the copy of this order is forwarded to the concerned Authority at the earliest and he will act on it.

(H.L. GOKHALE, J.)

(SMT.NISHITA MHATRE, J.)